



DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-570-967] [C-570-968]

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

**SUMMARY:** On May 23, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand redetermination in which it determined that certain drapery rail kits are outside of the scope of the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions,<sup>1</sup> pursuant to the CIT's remand order in *The Rowley Company v. United States Court No. 12-00055* (Ct. Int'l Trade November 30, 2012) (*Remand Order*). See Final Results of Redetermination Pursuant to Court Remand Rowley Company v. United States Court No. 12-00055 (February 27, 2013) (Remand Results). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's Final Scope Ruling on Drapery Rail Kits<sup>2</sup> and is amending its final scope ruling.

**DATES:** Effective Date: June 3, 2013.

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<sup>1</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Orders*).

<sup>2</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Drapery Rail Kits" (February 3, 2012) (Final Scope Ruling on Drapery Rail Kits).

**FOR FURTHER INFORMATION CONTACT:** James Terpstra, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3965.

## **SUPPLEMENTARY INFORMATION**

### **Background**

On November 16, 2011, the Rowley Company (Rowley) submitted a scope request claiming that certain drapery rail kits which it imports are outside the scope of the *Orders*. The Department issued its Final Scope Ruling on Drapery Rail Kits on February 3, 2012; in that ruling, the Department determined that certain drapery rail kits are within the scope of the *Orders*.

On August 10, 2012, Rowley filed its brief with the Court. On October 19, 2012, the Department asked the Court to grant it a voluntary remand that would allow it to re-examine the determination it reached in its Final Scope Ruling on Drapery Rail Kits. On November 30, 2012, the Court granted the Department's request for a voluntary remand. In the Remand Results, we found that the drapery rail kits described in the Scope Request constituted "finished goods kits" as described in the scope of the *Orders*, and, thus, fall outside the scope. The Department found that the drapery rail kits are designed to incorporate readily interchangeable drapes or curtains that can change with users' needs and are intended to be customizable. On May 23, 2013, the CIT sustained the Department's Remand Results.<sup>3</sup>

### **Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department

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<sup>3</sup> See *Remand Order*.

determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 23, 2013, judgment in this case constitutes a final decision of that court that is not in harmony with the Department’s Final Scope Ruling on Drapery Rail Kits. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, the Department amends its final scope ruling and now finds that the scope of the *Orders* does not include Rowley’s drapery rail kits. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct CBP to liquidate entries of Rowley’s drapery rail kits without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

June 5, 2013 \_\_\_\_\_  
Date

